
In the United States
Circuit Court of Appeals
For the Ninth Circuit.

In the Matter of
Ontario Canning Co., Inc., a cor-
poration,
Debtor.

Weisstein Bros. & Survol, a California
corporation,
Appellant,

vs.

Hubert F. Laugharn, Trustee in Bank-
ruptcy of Ontario Canning Co., Inc.,
Debtor,
Appellee.

REPLY BRIEF OF APPELLEE.

ROBERT B. POWELL,
633 Subway Terminal Bldg., Los Angeles, Cal.
Solicitor and Attorney for Appellee.

No. 8120

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Appellee.

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QUESTION FOR DECISION.

Is the appellant entitled to the sum of \$1,366.20 under the terms of the stipulation, or is it a general creditor of this debtor estate in the sum of \$962.04?

STATEMENT OF THE CASE.

The Trustee does not find particular fault with the statement of the case as made by appellant, but believes that it should be more particularly pointed out that the Lawrence Warehouse Company was a separate and individual concern and had no connection with the debtor, Ontario Canning Co., Inc., and that the debtor exercised no control or dominion over the Lawrence Warehouse Company, and further that under the terms of the pledge agreement between the Security-First National Bank of Los Angeles, and the debtor, Ontario Canning Co., Inc., the Lawrence Warehouse Company was the agent of the Security-First National Bank of Los Angeles, and thus, had control of the merchandise involved in this appeal.

It should be further borne in mind that the Trustee only sold all of the right, title and interest of the debtor estate in and to this merchandise and other merchandise which had been previously pledged to the Security-First National Bank of Los Angeles.

ARGUMENT.

There can be no doubt that as between the debtor and the appellant, Weisstein Bros. & Survol, there was a sale of the particular merchandise. It is also undisputed that the merchandise had been paid for and that only 100 cases of the youngberries had been delivered to the appellant, and that as between appellant and the debtor, appellant was entitled to delivery of 253 cases if there had been no previous pledge to the Security-First National Bank of Los Angeles.

Under the terms of the stipulation, it became necessary in order for the appellant to become entitled to the sum of \$1,366.20 that it be shown that the merchandise "came into the possession of the Trustee, or that said merchandise had been theretofore or thereafter placed in the Field Warehouse of the debtor operated by the Lawrence Warehouse Company, and that the *Trustee or claimant was entitled to recover possession from or out of the Field Warehouse.*" Quite obviously, the Trustee did not come into possession of the merchandise because it was held under the terms of the pledge with the Security-First National Bank of Los Angeles, and this pledge agreement has not been attacked by appellant.

The records of this proceeding reflect that the Security-First National Bank of Los Angeles and the Lawrence Warehouse Company appeared at the hearing before the Referee and objected to the jurisdiction of the Bankruptcy Court, and that this objection was sustained by the Referee. (See Certificate by Referee to Judges upon review.)

It becomes quite apparent that upon December 15, 1934, the date the debtor's petition was filed herein, that the merchandise involved in this appeal was not in the possession of the debtor and that thereafter it did not come into the possession of the Trustee because it was held by the Lawrence Warehouse Company for the benefit of the Security-First National Bank under the terms of the pledge agreement. This being so, the appellant is relegated to the position of a general creditor of this estate. The District Court upon review of the Referee's order determined that the original purchase price of the merchandise involved herein was \$1,342.29 and that the cost price of the remaining 253 cases of merchandise which

had been paid totalled the sum of \$962.04, and therefore held that appellant was a general creditor against this debtor estate in said amount. It can be undisputed that the District Court had the right to review the records and files of this proceeding in order to determine the correct and proper amount of appellant's claim, and the conclusions of the Referee are in no sense binding upon the Court. The Court is just as able to indulge in inferences from the testimony produced as is the Referee.

In the Matter of George B. McClelland, Bankrupt.
(District Court, Southern District of California.) 275 Fed. 576.

Conclusion.

The Trustee respectfully submits the decision and order of the District Court should be affirmed, and that it should be decreed that appellant is a general creditor of the debtor estate in the sum of \$962.04, and no other sum.

Respectfully submitted,

ROBERT B. POWELL,
Solicitor and Attorney for Appellee.